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August 31, 2006

Attention: Section 1813 Row Study  
Office of Indian Energy and Economic Development  
Room 20-South Interior Building  
1951 Constitution Avenue, NW  
Washington, D.C 20245



Subject: Comments on Draft Report to Congress

To Whom It May Concern:

Public Service Company of New Mexico (PNM) offers the following comments related to the Draft Report to Congress, dated August 7, 2006, prepared by the Departments of Energy and Interior related to right of way costs on Native American lands.

PNM is the largest provider of electric and natural gas services in New Mexico. PNM owns and operates electric and natural gas lines facilities on lands owned by 17 different tribes. PNM is facing over 90 right of way renewals on these tribal lands within the next 15 years. Therefore, PNM has a very keen interest in the final outcome of this process.

Although PNM greatly appreciates the effort that went into the production of the Draft Report by study committee staff, PNM is concerned about the overall tenor of the report which seems to favor the general tribal position that there is "no problem" regarding tribal rights of way. This position has been repeatedly stated by tribal officials in recent nationwide and regional hearings. PNM strongly disagrees with this assertion. PNM believes that serious problems exist, particularly on right of way renewal matters. Also one glaring statement of the draft report is contained in Section 4.2, in which it is noted that "most Row negotiations are completed successfully."

PNM takes issue with this statement and its implication that the current right of way approval process for renewals is working well. It is not. When PNM and other utility companies pay huge multiples of appraised fee value for shorter and shorter terms, in the face of questionable tribal trespass statutes, the system needs revamping. Furthermore, when PNM and other utility companies pay huge multiples of appraised fee value knowing that the alternative is building a very costly "build around" option or possibly shutting down the electric or gas transmission line, this is a problem. And when PNM's financial staff concludes that PNM will need to seek rate increases in the five to six percent range if current right of way cost trends hold, this too, is a problem. Although such a rate increase may not seem high to some, PNM deems it to be significant taken in the context of its whole ratemaking structure.

As PNM has publicly stated in the Denver and Albuquerque hearings, PNM would like to see a compromise reached regarding right of way issues on tribal lands. PNM respectfully requests that the following option be included with the other Options that are contained in Section 4.4 of the Draft Report.

#### NEW PROJECTS

For all new right of way projects, maintain the status quo. In other words, the tribes and utility companies shall continue to negotiate agreements on their own with no outside interference or arbiter. Full tribal consent required. If a tribe and utility are unable to reach agreement, then the company has the possible option to build around the tribe. If the build around option is not feasible, then the company must find a way to live with the situation in view of the company's obligation to serve its customers.

#### RIGHT OF WAY RENEWALS

For all right of way renewals where a company has utility lines in the air or in the ground, the federal approval process should be modified so that if both parties are unable to reach agreement on right of way renewal terms, then a neutral appraisal shall be obtained for the right of way corridor and the company shall pay a multiple of the appraised value for a term of 25 or more years.

PNM believes that the above compromise recognizes the unique sovereign status of the tribes, but also affords companies some degree of certainty for right of way renewals. Such element of certainty is totally nonexistent today for right of way renewals. Each tribe is uniquely different in the manner it values, negotiates for and approves right of way renewals. Therefore a company never really knows what it must budget for or pay for upcoming right of way renewals until the final tribal council vote is taken on the right of way renewal. This system needs to be changed.

In closing, I would like to say that PNM applauds the fact that the Draft Report contains a list of options for Congress to consider when studying this right of way cost matter. PNM strongly believes that the final report sent to Congress should contain these options and the PNM compromise option which is discussed above.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rob Roberts", with a long horizontal line extending to the right.

Rob Roberts  
Manager, Right of Way Department